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and, generally, the good order and peace of the community, the city is empowered to adopt and enforce it.

"We cannot discover how an ordinance requiring every person conducting a legitimate mercantile business in a town, except a few specially favored classes, to close their places of business at 6:30 o'clock p. m., can in any manner, directly or remotely, even tend to promote public health, public morals, the public safety, or the good order and peace of the community; but, on the contrary, we think that the provision of the ordinance in question, for a violation of which the petitioner is held in custody, is an unwarranted governmental interference with the personal rights of the merchant class of the citizens of the town, and is void, and that the conviction and sentence of the petitioner by the mayor for its infraction is not warranted by law, and is a nullity."

Taxation—Deduction of Federal Estate Tax before Assessing State Inheritance Tax—Post Script to Opinion.—In *In re Roebbling's Estate* (N. J.), 104 Atl. 295, the Prerogative Court of New Jersey held that the death duty imposed by War Revenue Act Sept. 8, 1916, is a tax upon decedents' estates, and in assessing the state transfer inheritance tax is to be deducted from the value of the estate, in ascertaining the clear market value of the property transferred.

After discussing at length the nature of the federal estate tax and the state inheritance tax statute, the court said.

"The highest courts in two of the states have recently decided the question, reaching opposite conclusions. The Minnesota Supreme Court held that the federal tax should be deducted. *State v. Probate court of Hennepin County* (Minn.), 166 N. W. 125. The Court of Appeals of New York held to the contrary view. *In re Sherman Estate*, *supra*. The New York Supreme Court allows that its transfer tax is based upon the amounts passing to the respective transferees, but holds to the view that the conditions of transfer, as embodied in its Transfer Tax Act, comprehend the clear market value of the property at the time of the transfer, exclusive of federal tax, and expressed the opinion that if the federal government may impose an inheritance tax, which is entitled to be deducted from the estate prior to the assessment of the estate transfer tax, it has interfered with such conditions, and that the constitutionality of a federal act entitled to such a construction and effect might well be doubted. If the court had acknowledged the federal tax as levied upon the estate transferred, doubtless a different result would have been reached.

"In the earlier case, *Matter of Gihon*, *supra*, the Court of Appeals had before it the question whether the federal legacy tax of 1898

should be allowed as a deduction, and it held, and I quote from the *Sherman Case*:

"Neither the amount of the state tax, nor the amount of the federal inheritance tax imposed under the War Revenue Act of 1898, was deductible, because each was a tax, not upon property, but upon succession—that is, a tax on a legatee for the privilege of succeeding to the property—and was payable out of his legacy, not out of the estate—a tacit evincement that if the federal tax had been upon the estate, and not upon the legacies, it would have been deductible from the assets of the estate before computing the state transfer tax. Previous to the decision in the *Gihon Case*, the Supreme Court of Massachusetts, in *Hooper v. Shaw*, 176 Mass. 190, 57 N. E. 361, decided that the legacy tax of the War Revenue Act of June 13, 1898, c. 448, 30 Stat. 448, should be deducted in ascertaining the state's succession tax. In view of the fact that both federal and state taxes were imposed upon the same successions and were payable by the beneficiaries, it is difficult to reconcile the deliverance in that case to the principles of the *Gihon Case*. The appraisement upon which the tax was assessed will be reduced by the sum of the federal tax.

"P. S.—Since writing the above, my attention has been called to the case of *Corbin v. Townshend*, 103 Atl. 647, in which the Supreme Court of Connecticut decided that the federal tax is to be deducted from the appraisement in computing the state's succession tax."

Trade-Marks and Trade Names—Character of Right—Priority of Appropriation.—In *United Drug Co. v. Theodore Rectanus Co.*, 39 Sup. Ct., it was held that the adoption of trade-mark in connection with proprietary medicine sold in Massachusetts and neighboring states did not, in absence of valid legislation project adopter's right of protection in advance of extension of her trade, or operate as claim of territorial rights over areas into which it was thereafter advisable to extend trade, as Kentucky, where Massachusetts adopter was subject to rights of prior user of name in Kentucky.

The essential facts are as follows: About the year 1877, Ellen M. Regis, a resident of Haverhill, Mass., began to compound and distribute in a small way a preparation for medicinal use in cases of dyspepsia and some other ailments, to which she applied as a distinguishing name the word "Rex." In 1898 she recorded the word as a trade-mark under the laws of Massachusetts and in 1900 procured its registration in the United States Patent Office. In 1911, petitioner purchased the business with the trade-mark right, and has carried it on in connection with its other business, which consists in the manufacture of medicinal preparations, and their distribution and sale through retail drug stores, known as "Rexall